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Supreme Court of the United States

OCTOBER TERM, 1965

No. 9913

JAMES P. MOZINGO, III, PETITIONER,

versus

YORK COUNTY NATURAL GAS AUTHORITY,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on October 6, 1965.

OPINIONS BELOW

The opinion of the District Court is reported in 238 F. Supp. 964, and is printed in Appendix A hereto. The opinion of the Circuit Court of Appeals is reported in 352 F. (2d) 78, and is sprinted in Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on October 6, 1965. By Order of Associate Justice William J. Brennan, Jr., dated December 28, 1965, time for filing of this petition was extended to and including March 4, 1966. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. 1254 and 11 U. S. C. 401 *et sequitur*.

QUESTIONS PRESENTED

I. May a plan of composition under the provisions of 11 U. S. C. 403 (e) (1) be confirmed by a Federal Court as fair, equitable and non-discriminatory when the plan makes provision for payment in cash to some dissenting bondholder-creditors for their bonds, without providing for sufficient cash to make such payment to all dissenting bondholder-creditors of the same class, and without designating or disclosing which of said bondholders are to be preferred in making such payment?

II. May a plan of composition, under the provisions of 11 U. S. C. 403 (e) (5) be confirmed by a Federal Court where such plan fails to disclose an agreement for the payment of fees to certain bondholders for the filing of their acceptance of the plan, when other bondholders of the same class are not apprised of such payment and do not receive a like fee for the filing of their acceptance?

III. May a Federal Court impair the obligation of a bond in confirming a plan of composition under the provisions of 11 U. S. C. 401, and following, by declaring that all bonds not tendered for exchange within a limited period of time shall be forfeited and become null and void and of no force and effect, notwithstanding that such bonds provide for their maturity beyond the time limited by the Court for the tender of such bonds for exchange?

IV. May a Federal Court, in furtherance of a plan of composition, force the holders of first-mortgage bonds to surrender their bonds, and accept in exchange therefor, refunding bonds which allow the debtor to issue an unlimited number of "prior lien bonds" which constitute a claim superior to that of the refunding bonds?

STATUTES

The statutory provisions involved are 11 U. S. C. 403 (d) and (e), and Section 59-681, Code of Laws of South Carolina, 1962, printed in Appendix C hereto.

STATEMENT

In August, 1964 the York County Natural Gas Authority, a public authority in the Sate of South Carolina as defined in 11 U. S. C. 401 *et seqitur*, petitioned the District Court for an Order approving a plan of composition of the bonded indebtedness of the Authority. The petitioner James P. Mozingo, III, a bondholder-creditor of the Authority, on his own behalf and that of other bondholders similarly situated, opposed the plan as presented by the Authority. By Order dated February 10, 1965 the District Court approved the plan of composition as presented by the Authority. In a *per curiam* decision filed October 6, 1965 the Fourth Circuit Court of Appeals affirmed the District Court. In its opinion, the Court of Appeals approved portions of the plan which allowed some dissenting bondholders to be paid in cash for their bonds, while other dissenters, such as petitioner, were denied any such option. The Court also approved the payment to certain bondholders of a fee of one-half of one percent ½ of 1%) for filing their acceptance to such plan, when the agreement for such payment was not disclosed to the other bondholders, who received no such fee. Although the majority of the bonds in question